IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 371 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? :

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Mr Akil Kureshi for Mr M.R.Bhatt for the Applicant
Notice served

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CORAM : MR.JUSTICE R.K.ABICHANDANI, J.
and
MR. JUSTICE A.R. DAVE, J.

Date of decision: 01/08/2000

ORAL JUDGMENT

(Per R.K.Abichandani, J.)

The Income-tax Appellate Tribunal, Ahmedabad Bench-C, has referred the following question for the

opinion of this Court under Section 256(1) of the Income-tax Act, 1961:-

"Whether, relief under section 80J was required to be calculated at 6% on half the profit in respect of second plant for the assessment year in question?"

2 The relevant Assessment Years were 1970-71 and 1971-72. The assessee, a limited company, was a newly established industrial undertaking for which relief was claimed under Section 80J of the Act. The ITO rejected the claim. But, later on, the claim was allowed. After the Income-tax Appellate Tribunal had decided the appeal, the assessee had moved a miscellaneous application requesting the Appellate Tribunal to modify its original order made on 15.11.1980 contending that a ground was missed and relief under Section 80J was required to be calculated at 6% on half the profit in respect of second plant for the relevant Assessment Year in question. The Tribunal following the decision of the Gujarat High Court in CIT V. Elecon Engineering Company Limited reported in 104 ITR 510 accepted the contention of the assessee and modified its earlier order accordingly. In the said decision which was rendered in the context of Section 84 of the Act (corresponding to the present Section 80J) it was held that the said provision provided for tax holiday for new industrial undertakings or hotels and exempted the income thereof to the extent of six per cent of the capital employed in the business of the new industrial undertakings or hotels computed in the manner prescribed by rule 19 of the Income-tax Rules, 1962. The legislative intent as expressed in rule 19, having regard to the scheme of the entire rule, is that to effectively extend the concession of the tax holiday, the average capital employed throughout the year in an industrial undertaking or a hotel should form the basis for such concession. This decision has been affirmed by Hon'ble the Supreme Court in CIT v. Elecon Engineering Company Limited reported in 167 ITR 639.

3 In this view of the matter, we hold that the relief under Section 80J was required to be calculated at 6% on half the profit in respect of second plant for the assessment year in question, as held by the Tribunal. The question referred to us is therefore answered in the affirmative against the Revenue and in favour of assessee. The reference stands disposed of accordingly with no order as to costs.

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